

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

POLAROID CORPORATION,

Plaintiff and Counterclaim Defendant,

v.

HEWLETT-PACKARD COMPANY,

Defendant and Counterclaim Plaintiff.

C.A. No. 06-738-SLR

REDACTED

**DECLARATION OF WILLIAM J. MARDEN JR. IN SUPPORT OF
DEFENDANT HEWLETT-PACKARD'S REPLY BRIEF IN
SUPPORT OF ITS CROSS-MOTION TO PRECLUDE**

FISH & RICHARDSON P.C.

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*Attorneys for Defendant and Counterclaim-Plaintiff
Hewlett-Packard Company*

Dated: August 7, 2008

I, William J. Marsden, Jr., declare as follows:

1. I am an attorney with Fish & Richardson P.C., counsel for Hewlett-Packard Company. I am a member of the Bar of the State of Delaware and of this Court. I have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.

2. Attached hereto as Exhibit A is a true and accurate copy of a letter sent February 15, 2008 from John Giust, counsel for Hewlett-Packard, to David Higer, counsel for Polaroid.

3. Attached hereto as Exhibit B are true and accurate copies of excerpts from the deposition of Dr. Peggy Agouris, taken May 6, 2008.

Executed this 7th day of August, 2008, at Wilmington, Delaware.

/s/ William J. Marsden, Jr.

William J. Marsden, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2008, I electronically filed with the Clerk of Court the foregoing document using CM/ECF which will send electronic notification of such filing(s) to the following counsel:

Via Email

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Courtesy Copy Via Federal Express

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/s/ William J. Marsden, Jr.

William J. Marsden, Jr.

EXHIBIT A

FISH & RICHARDSON P.C.

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VIA ELECTRONIC MAIL

February 15, 2008

Web Site
www.fr.com

David W. Higer
Kirkland & Ellis LLP
200 E. Randolph Dr.
Chicago, IL 60601

Re: *Polaroid Corporation v. Hewlett-Packard Company*
USDC-D. Del. - C.A. No. 06-738 (SLR)

ATLANTA
AUSTIN
BOSTON
DALLAS
DELAWARE
MUNICH
NEW YORK
SAN DIEGO
SILICON VALLEY
TWIN CITIES
WASHINGTON, DC

Dear David:

At least the following Polaroid products should have been marked, as required by 35 U.S.C. § 287, according to Polaroid's application of asserted claim constructions for the '381 patent:

- Before and After;
- Polacolor Insight 3.0, 4.5, and 5.0;
- SimplePCIp;
- Sprintscan 35, 35LE, 35ES and 35 Plus;
- Other IQA and eIQA products;
- Products using the TWAIN driver; and
- Products using Photoshop plug-ins.

As you know, Polaroid bears the burden of proving compliance with the statutory requirements for marking. Accordingly, we expect that Polaroid will include any relevant expert testimony on the (non)marking of these products (including but not limited to whether such products embodied the '381 patent under any asserted claim construction(s) in this case) in its initial expert report due March 14, 2008. In particular, Polaroid should analyze the dodge and burn source code/routines and the adaptive sharpening source code/routines in these or any other products. Hewlett-Packard will seek to strike any expert testimony not so disclosed on March 14, 2008.

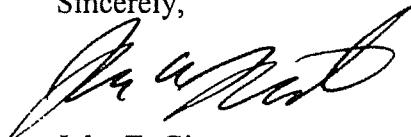
In addition, we expect that Polaroid will update its Responses to Interrogatories Nos. 9 and 10, and at minimum include (with reservations if Polaroid so chooses) each of the Polaroid products listed above. This supplementation should include a description of any inability to answer completely on grounds of loss or destruction

FISH & RICHARDSON P.C.

David W. Higer
February 15, 2008
Page 2

of documentation or information. Please provide this supplementation by no later than Wednesday, March 27, 2008.

Sincerely,



John E. Giust

JEG:jmo
10811383.doc

EXHIBIT B

**REDACTED
IN ITS ENTIRETY**